# Departmental Performance Report

**For the period ending March 31, 2009**

The Honourable Stockwell Day
Minister of International Trade

Canada

## Table of Contents


SECTION 1 – DEPARTMENTAL OVERVIEW

1.1 The Minister's Message ..... 1
1.2 Summary Information ..... 2
1.2.1 Raison d'être and Responsibilities ..... 2
1.2.2 Strategic Outcome and Program Activity Architecture (PAA) ..... 3
1.2.3 Financial and Human Resources ..... 3
1.2.4 Performance Summary ..... 4
1.2.5 Contribution of Priorities to Strategic Outcome ..... 4
1.2.6 Risk Analysis – Operating Environment ..... 5
1.2.7 Expenditure Profile ..... 5
1.2.8 Voted and Statutory Items ..... 6

SECTION 2 – ANALYSIS OF PERFORMANCE BY STRATEGIC OUTCOME

2.1 Strategic Outcome ..... 7
2.1.1 Program Activity by Strategic Outcome ..... 7
2.1.1.1 Administratin of International Trade Dispute Settlement Mechanisms ..... 7
2.1.2 Benefits to Canadians ..... 10
2.1.3 Performance Analysis ..... 10
2.1.4 Lessons Learned ..... 12

SECTION 3 – SUPPLEMENTARY INFORMATION

3.1 Financial Highlights ..... 13
3.2 Other Items of Interest ..... 14
3.2.1 Departmental Overview ..... 14
3.2.2 Who We Are ..... 14
3.2.3 Where We Are Located ..... 14
3.2.4 How We Are Organized ..... 15
3.2.5 Travel Policies ..... 15

ANNEX A – The Mandate of the NAFTA Secretariat ..... 16

HOW TO CONTACT US ..... 17

## SECTION 1 – DEPARTMENTAL OVERVIEW

### 1.1 The Minister's Message

The North American Free Trade Agreement (NAFTA) – now in its 16th year – has contributed to significant increases in trade and foreign direct investment in North America. NAFTA has contributed to the competitiveness of the North American region by sharpening the competitive advantages of businesses and increasing the prosperity of our citizens. Canada remains committed to NAFTA as the cornerstone of North American competitiveness.

NAFTA covers a broad range of issues. It provides for the elimination of duties for practically all goods, facilitates the cross-border movement of business persons, addresses certain non-tariff barriers and provides formal mechanisms for resolving disputes. NAFTA created one of the largest free trade areas in the world and has a total market place of some 444 million consumers, with a combined Gross Domestic Product (GDP) of $18.0 trillion in 2008. Prior to the current global economic situation, North American employment levels had climbed 24% between 1993 and 2008, representing a net gain of 40.1 million jobs.

The NAFTA Secretariat is composed of the Canadian Section, the U.S. Section and the Mexican Section. It administers the mechanisms specified under the NAFTA to resolve trade disputes between national industries and/or governments in a timely and impartial manner. Through increasing the quality of the management of international trade dispute settlement processes, the Canadian Section of the NAFTA Secretariat also contributes to the strengthening of Canada's international trade performance. Exporters and investors are far more likely to engage in international commerce when they have access to impartial dispute settlement mechanisms should disagreements arise.

Canada's economic prosperity will continue to be defined by its success in an increasingly integrated international market, especially in North America. With today's global recession, Canada must look forward; we must continue with a renewed commitment to the removal of barriers to the free flow of trade and investment in combination with an effective mechanism to resolve any potential dispute. Under these circumstances, the conditions will be set where Canadians can further excel and where Canada can rise from today's economic downturn under more favourable conditions.

I encourage the Canadian Section of the NAFTA Secretariat to continue its high level of service in the administration of dispute settlement mechanisms of the NAFTA.

The Honourable Stockwell Day
Minister of International Trade

## 1.2 Summary Information

This report begins by briefly describing the purpose of the NAFTA Secretariat, Canadian Section, followed by the Canadian Section's strategic outcome and performance results for the period under review, including financial performance and operating environment. The report then summarizes risks and challenges as well as human and financial resources. The final section provides organizational information on who we are and what we do.

The report reflects the Government of Canada Reporting Principles, which requires departments and agencies to:

- focus on the benefits for Canadians, explain the critical aspects of planning and performance, and set them in context;
- present concise, credible, reliable, and balanced information;
- associate performance with plans, priorities, and expected results, explain changes, and apply lessons learned, and
- link resources to results.

### 1.2.1 Raison d'être and Responsibilities

The NAFTA Secretariat, Canadian Section is an independent agency created in 1994 under the *North American Free Trade Agreement Implementation Act* (see Annex A for the full mandate of the Secretariat). Its principle responsibility is to administer the dispute settlement provisions in NAFTA Chapters 19 and 20. It also provides assistance to the Ministerial level Free Trade Commission when required and participates in the Chapter 19 Working Group. The Canadian Section's mandate was expanded in 1997 and again in 2002 to include the administration of dispute settlement provisions in Canada's Free Trade Agreements with Israel, Chile and Costa Rica.

To fulfill its mandate, the Canadian Section must maintain a highly efficient, effective and impartial process for the implementation of dispute settlement provisions under NAFTA and the bilateral Agreements. This is an important contribution to preserving the benefits of free trade for all stakeholders.

The Canadian Section of the NAFTA Secretariat is funded by Parliament through a program expenditures vote. It reports to Parliament, for financial accountability purposes, through the Minister of International Trade.

For more details on the operating context, see the NAFTA Secretariat website at http://www.nafta-sec-alena.org and the Canadian Section website at http://www.nafta-alena.gc.ca/en/view.aspx

### 1.2.2 Strategic Outcome and Program Activity Architecture (PAA)

The chart below illustrates the NAFTA Secretariat, Canadian Section's strategic outcome supported by its key program activity.

| | |
|---|---|
| **Strategic Outcome** | A highly efficient, impartial and rules-based international trade dispute resolution process that benefits Canadian exporters to NAFTA countries, as well as NAFTA country exporters doing business in Canada |
| **Program Activity** | Administration of International Trade Dispute Settlement Mechanisms |

### 1.2.3 Financial and Human Resources

**Total Financial Resources ($ 000)**

| 2008-2009 | | |
|---|---|---|
| Planned Spending | Authorities | Actual Spending |
| 3,004 | 3,089 | 1,578 |

**Total Human Resources (FTEs)**

| 2008-2009 | | |
|---|---|---|
| Planned | Actual | Difference |
| 13 | 11 | -2 |

### 1.2.4 Performance Summary

The tables below show planned and actual spending by our key program activity. It also indicates how each operational priority performed in achieving expected results and the link to the agency's only strategic outcome.

| Strategic Outcome: A highly efficient, impartial and rules-based international trade dispute resolution process that benefits Canadian exporters to NAFTA countries, as well as NAFTA country exporters doing business in Canada | | |
|---|---|---|
| **Performance Indicators** | **Targets** | **2008-09 Performance** |
| Perception of institutional independence and increased confidence by participants in the integrity of the dispute settlement process | At least 80 % or more of the clients are satisfied that the NAFTA Secretariat, Canadian Section, administered the dispute settlement provisions in a manner that ensures unbiased administrative processes, equity and fairness | There were no cases filed in Canada during the year under review. As a result, the client satisfaction monitoring survey could not be carried out |

| **Program Activity** | **2007-08 Actual Spending** ($, 000) | **2008-09 Main Estimates** ($, 000) | **2008-09 Planned Spending** ($, 000) | **2008-09 Total Authorities** ($, 000) | **2008-09 Actual Spending** ($, 000) | **Alignment to Government of Canada Outcome** |
|---|---|---|---|---|---|---|
| Administration of International Trade Dispute Settlement Mechanisms | **1,618** | **3,004** | **3,004** | **3,089** | **1,578** | A Strong and Mutually Beneficial North American Partnership |
| **Total** | **1,618** | **3,004** | **3,004** | **3,089** | **1,578** | |

### 1.2.5 Contribution of Priorities to Strategic Outcome

| **Operational Priorities** | **Type** | **Status** | **Linkages to Strategic Outcome** |
|---|---|---|---|
| 1. Effective administrative support to panels and committees to ensure efficient and effective dispute settlement processes | Ongoing | Successfully met | A highly efficient, impartial and rules-based international trade dispute resolution process that benefits Canadian exporters to NAFTA countries, as well as NAFTA country exporters doing business in Canada |
| 2. Foster better collaboration with delivery partners in the administration of trade disputes | Ongoing | Successfully met | Same |

| | Management Priorities | Type | Status | Linkages to Strategic Outcome |
|---|---|---|---|---|
| 3. | Continuous improvement of information management | Ongoing | Partially met | Same |
| 4. | Increased human resources management to ensure the development of a professional workforce | Ongoing | Successfully met | Same |
| 5. | Review of sustainability of the infrastructure to meet information technology and physical assets needs | New | Successfully met | Same |
| 6. | Strategic Plan and an Integrated Business and Human Resources Plan | New | Successfully met | Same |

### 1.2.6 Risk Analysis – Operating Environment

The NAFTA Secretariat operates in a context where different legal, linguistic, business and cultural traditions prevail. Managing the Canadian participation in this tripartite organization must be conducted within the policies and practices of the Canadian Government and also be harmonized with administrative practices of its U.S. and Mexican partners. New initiatives often require extensive consultations and negotiation before they can be implemented. In light of this, maintaining close working relationships with its counterpart sections in the United States and Mexico is fundamental to the Canadian Section's effective performance.

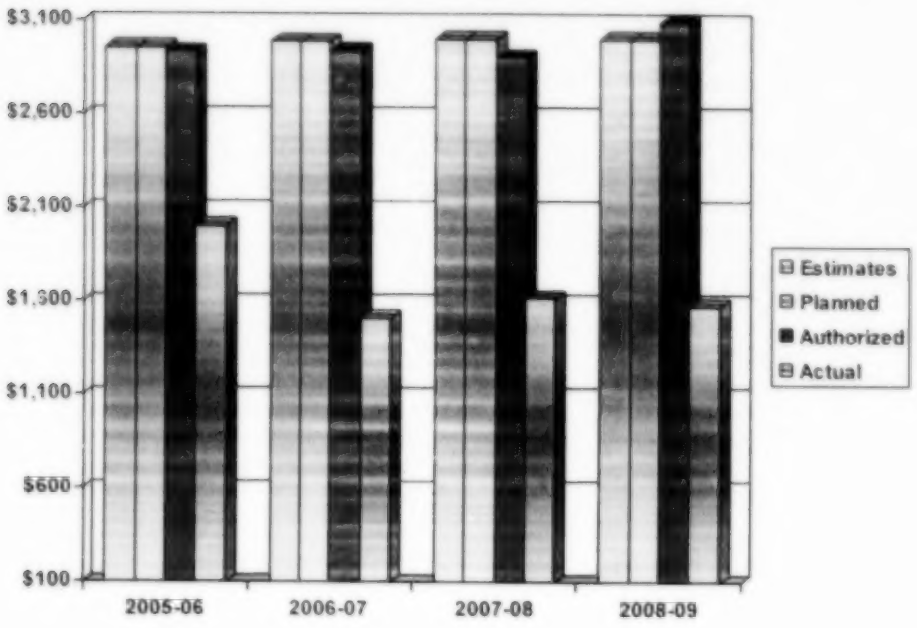
### 1.2.7 Expenditure Profile

The expenditure profile of the Canadian Section can vary from year-to-year and future spending trends are difficult to predict. This is because the costs associated with delivery of its program fluctuate with the number of dispute settlement cases that are filed. In 2008-09, the number of cases involving Canada was much fewer than previous caseload years.

The government is nevertheless required under NAFTA and Canadian legislation to maintain the dispute settlement system and be ready for new cases as they arise. This includes management of the web-enabled dispute settlement case registry system and the NAFTA Secretariat website, both of which are the responsibility of the Canadian Section on behalf of the Secretariat, as well as the provision of information to governments and the public on an ongoing basis. The corporate expenses associated with the management of the agency itself are ongoing.

The figure below shows the Canadian Section's spending trends from 2005-06 to 2008-09.

**Spending Trend** ($, 000)




### 1.2.8 Voted and Statutory Items ($, 000)

| Vote or Statutory Item | Truncated Vote or Statutory Wording | 2006-2007 Actual Spending | 2007-2008 Actual Spending | 2008-2009 Main Estimate | 2008-2009 Actual Spending |
|---|---|---|---|---|---|
| 45 | Program Expenditures | 1,377 | 1,524 | 2,814 | 1,464 |
| (S) | Contributions to Employee Benefit Plans (EBP) | 134 | 94 | 190 | 114 |
| | **Total** | **1,511** | **1,618** | **3,004** | **1,578** |

## SECTION 2 – ANALYSIS OF PERFORMANCE BY STRATEGIC OUTCOME

### 2.1 Strategic Outcome

A highly efficient, impartial and rules-based international trade dispute resolution process that benefits Canadian exporters to NAFTA countries, as well as NAFTA country exporters doing business in Canada

In its 2008-2009 RPP, the NAFTA Secretariat, Canadian Section identified one strategic outcome through one program activity. Our strategic outcome is directly aligned with one of the Government of Canada's outcomes, which is **A Strong and Mutually Beneficial North American Partnership**. Our key program activity is briefly described below.

#### 2.1.1 Program Activity by Strategic Outcome

##### 2.1.1.1 Administration of International Trade Dispute Settlement Mechanisms

Our key Program Activity clearly reflects our only strategic outcome. In carrying out the Administration of International Trade Dispute Settlement Mechanisms, the Canadian Section collaborates with its counterparts in the United States and Mexico and develops policies and programs and administers a court-like registry to carry out its mandated responsibilities.

Further, in its 2008-2009 Report on Plans and Priorities (RPP), the NAFTA Secretariat, Canadian Section identified a secondary program activity defined as internal services, in line with TBS directives. This program activity is used by all departments and agencies to describe corporate services designed to deliver cost-effective support services that facilitate the achievement of departmental objectives. All financial and non-financial performance information relating to this program activity is captured under our key program activity.

The following table provides a summary of planned and actual spending on financial and human resources as well as performance related information.

| **Program Activity:** Administration of International Trade Dispute Settlement Mechanisms | | | | | |
|---|---|---|---|---|---|
| **2008-09 Financial Resources ($, 000)** | | | **2008-09 Human Resources (FTEs)** | | |
| Planned Spending | Total Authorities | Actual Spending | Planned | Actual | Difference |
| **3,004** | **3,089** | **1,578** | **13** | **11** | **-2** |

| Expected Results | Performance Indicators | Targets | Performance Status | Performance Summary |
|---|---|---|---|---|
| Effective support to panels and committees | Consistent and immediate availability of accurate, complete and relevant information to support panel proceedings | At least 80% or more of the clients indicating that they are fully satisfied with the information support provided to them | Met all | In collaboration with the U.S. and Mexican Section, successfully administered a total of six panel proceedings, with two decisions issued. Four of these proceedings were terminated and the remaining two were still under review as at March 31, 2009 |
| Efficient administrative processes | Quality of procedural advice and guidance provided to panelists and participants on dispute settlement procedures | Tested and continuously improved tools and systems | Met all | Ensured fair and equitable procedural and administrative services based on the legal principles and the rules and regulations applicable to the proceedings<br>Administered and operated a court-like registry for the filing and processing of panel review document |
| Increased national and international collaboration | Extent of cooperation and joint undertakings with other national sections in the administration of panel proceedings | Maintenance of common trilateral website<br>Maintenance of common Registry Information System<br>Harmonized procedural guidelines | Met all | Successfully re-launched the NAFTA Secretariat and the Canadian Section websites and the Registry Information System (dispute settlement cases data base)<br>Continued to use its website to disseminate information on dispute settlement matters<br>Collaborated with our counterparts to provide unbiased administrative, logistical and financial support to all panels |
| | Effective participation in the NAFTA Chapter 19 Operation Working Group Meetings to influence outcomes | Active participation | Met all | Effectively participated in the NAFTA Chapter 19 Working Group activities and engaged Parties to ensure formal meetings and follow-up conference calls were held with the view of improving the operation of Chapter 19 of the NAFTA. In this regard, Chapter 19 Rules of procedures were revised and published |

| Expected Results | Performance Indicators | Targets | Performance Status | Performance Summary |
|---|---|---|---|---|
| Improved management practices | Corporate culture that ensures transparency in management processes<br><br>Results of external and internal audit reports | Effectiveness of Financial Management Controls<br><br>Results of external and internal audits confirm compliance with policies | Partially met | Effective financial controls are in place. However, a recent audit of high-risk payments did reveal that documentation along with procedures and checklist to identify high risk transactions were not in place. Further two employees did no have adequate training. Steps have been taken to correct this situation. |
| | Existence of Strategic Plan and Integrated Business and Human Resource Plan | 1 Strategic Plan<br>1 Integrated Business and Human Resources Plan | Met all | Completed the five-year Strategic Plan and an Integrated Business and Human Resources Plan |
| | MAF assessments | MAF assessment results are "acceptable" or higher | Met all | MAF assessment results are "acceptable" or higher |
| | Existence of Information Management policies, directives and new function based classification system to manage our information assets | Implementation of Policy on Information Management | Partially met | This year, we initiated a project to implement the Policy on Information Management. As a result of this exercise, an assessment report was completed, new polices, directives and a function based classification system were developed as part of the Canadian Section information management framework.<br><br>During the next fiscal year, we will continue to implement the classification system. |
| Knowledgeable and adaptive workforce | Percentage of employees who have access to relevant Learning Advisory Services and cost effective training | Employees meet or exceeded the knowledge requirements of their positions, with the exception of the observation noted above. | Met all | Employees were provided with the appropriate initial, continuing and specialized training deemed necessary to acquire and maintain the level of expertise required to do their job and achieve their career goals. |

### 2.1.2 Benefits for Canadians

Canada's economic growth and prosperity rely on access to foreign markets, particularly in the NAFTA countries. The program activity of the NAFTA Secretariat serves the public interest by providing effective administration of the dispute settlement processes when our market access is jeopardized. Canadian exporters, importers, producers and investors in goods and service industries directly benefit from a fairer and more predictable operating environment.

### 2.1.3 Performance Analysis

The NAFTA Secretariat's actual performance management framework consists of six key documents. These are:

- The Report on Plans and Priorities - sets the strategic direction and outlines to parliamentarians and Canadians the results the organization plans to achieve with the resources entrusted to it;
- The Strategic Plan - defines the Secretariat's mandate and strategic outcome, assesses the internal and external situation, documents the corporate risk profile and provides strategic priorities for the next 3-5 years;
- The Integrated Business and Human Resources Plan - integrates business, people and technology management as the foundation for the effective planning of ongoing operations. It identifies the human resource and information technology implications by priority project for the fiscal year;
- Management Accountability Framework assessment, which provided us with excellent feedback to help us strengthen our management capabilities;
- Internal Audit Report; and,
- The Departmental Performance Report completes the accountability loop by reporting to Parliament on the results achieved.

The NAFTA Secretariat fully or partially met all of the five expected results highlighted under Section 2.1.1 above. Each of the expected results will be briefly discussed below.

***Effective support to panels and committees*** The Canadian Section administered a total of six panel proceedings, with two decisions issued. Four of these proceedings were terminated and the remaining two were still under review at March 31, 2009. All the proceedings involving Canada were filed in the U.S. Section of the NAFTA Secretariat. The Canadian Section collaborated with its counterpart to provide administrative, logistical

and financial support to these proceedings. Status reports for these cases are available on the NAFTA Secretariat website at http://www.nafta-sec-alena.org.

***Efficient administrative processes***: The Canadian Section ensured impartial procedural guidance and provided equitable administrative support to panelists and participants in the dispute settlement proceedings.

***Increased national and international collaboration***: The Canadian Section, in collaboration with the U.S. and Mexican Sections, successfully launched the new NAFTA Secretariat and Canadian Section websites and as well the new Registry Information System (case management system), which were completed towards the end of last fiscal year. The website provides a variety of users with easy access to online information. The web-based Registry Information System enables the three national sections to capture panel review related information and numerous other required tools in an environment where sharing information is an essential part of doing business. The established service standard respecting the postings of panel decisions and other notices on the website for the Registry services is that they should be posted on the same day the decisions are issued. This target was achieved 100% of the time.

The Canadian Section also participated in NAFTA Chapter 19 Working Group meetings and conference calls with a view of facilitating the operations of Chapter 19 panels.

***Improved management practices***: During the year under review, a Strategic Plan and Integrated Business and Human Resources Plan were developed. Steps also were taken to ensure compliance with the TBS Policy on Information Management. In this regard, a new classification system along with updated policies and directives, have been developed and are currently being implemented. Significant work remains to be done in order to fully implement the policy. As the project commenced the Canadian Section encountered challenges with respect to lack of in-house expertise. As a result the project completion and implementation periods were delayed.

***Knowledgeable and adaptive workforce***: The Canadian Section is facing a number of internal and external factors relating to sustaining the current level of human resources while delivering its mandated responsibilities in an effective and efficient manner. In this regard, we have initiated a capacity assessment aimed at ensuring that resources within the organization are utilized in the best possible way to achieve optimum results. Recommendations resulting from this assessment will be implemented during the next fiscal year.

### 2.1.4 Lessons Learned

The 2007-08 MAF assessment report highlighted that the Canadian Section "has continually demonstrated its willingness to work with the TBS to better articulate and implement management objectives". In this regard, the Canadian Section will continue such endeavours with central agencies and its counterparts to better serve all stakeholders.

In the areas of information technology/information management, the Canadian Section will continue to improve its information technology architecture so that it will be ready if and when an e-filing pilot project is launched.

## SECTION 3 – SUPPLEMENTARY INFORMATION

### 3.1 Financial Highlights

**For the Period ending March 31, 2009**
**Condensed Statement of Financial Position**

| | Percentage Variance | 2009 ($) | 2008 ($) |
|---|---|---|---|
| **Assets** | | | |
| Total Assets | (9.21%) | 256,582 | 282,620 |
| **Liabilities** | | | |
| Total Liabilities | 2.55% | 518,308 | 505,415 |
| **Equity** | | | |
| Total Equity | 17.74% | (261,726) | (222,795) |
| **Total** | (9.21%) | **256,582** | **282,620** |

**For the Period ending March 31, 2009**
**Condensed Statement of Operations**

| | Percentage Variance | 2009 ($) | 2008 ($) |
|---|---|---|---|
| Expenses | | | |
| Total Expenses | 7.96% | 1,890,068 | 1,750,781 |
| Revenues | | | |
| Total Revenues | (42.73)% | 698 | 1,219 |
| **NET COST OF OPERATIONS** | 7.99% | 1,889,370 | 1,749,562 |

Our financial statements are prepared in accordance with accrual accounting principles. The unaudited supplementary information presented in the financial tables in the DPR is prepared on a modified cash basis of accounting principles in order to be consistent with appropriations-based reporting. Note 3 of the financial statements reconciles these two accounting methods. For complete financial statements, please visit the Canadian Section website at: http://www.nafta-alena.gc.ca/en/view.aspx.

## 3.2 Other Items of Interest

### 3.2.1 Departmental Overview

**Mandate:**

- Administers the dispute settlement provisions of NAFTA Chapter 19 and 20;
- Provides assistance to the NAFTA Free Trade Commission when required; and,
- Administers dispute settlement provisions in Canada's Free Trade Agreements with Israel, Chile and Costa Rica.

- **Size:**
  - 2008-2009 Actual Spending = $1,578,138
  - Number of FTEs = 11

- **Role:**
  - Administration of international trade dispute settlement mechanisms by providing registry services and procedural guidance with respect to the Rules of Procedures, Code of Conduct and conflict of interest guidelines that apply to panels of experts who hear and decide on cases brought before them (visit http://www.nafta-sec-alena.org/en/view.aspx?x=225 for an overview of NAFTA dispute settlement provisions); and,
  - Joint administration of dispute settlement panels with the other involved national section(s) following an appeal of a decision made by an investigating authority such as, in Canada, the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT) and government to government disputes involving two or three Parties.

- **Reporting Relationship:**
  - Report to Parliament through the Minister of International Trade

### 3.2.2 Who We Are

The NAFTA Secretariat is a unique organization established by the Free Trade Commission, pursuant to Article 2002 of the NAFTA. It comprises the Canadian, the United States and the Mexican national sections.

### 3.2.3 Where We Are Located

The national sections, which are "mirror-images" of each other, are located in Ottawa, Washington and Mexico City, and each is headed by a Secretary appointed by her/his respective government.

### 3.2.4 How We Are Organized

Each national section maintains a court-like registry relating to panel and committee proceedings. The involved national sections provide joint administration of panel and committee proceedings and share equally all expenses related to such proceedings. As a result, the national sections have harmonized their registry operations and records management practices. Further, the three national sections have jointly developed and administer the Integrated Registry Information System and the NAFTA Secretariat trilateral website, which are hosted by the Canadian Section. In light of this, the Canadian Section's relationship with its counterpart sections in the United States and Mexico is fundamental to its effective performance.

### 3.2.5 Travel Policies

**Special Travel Authorities:**

The NAFTA Secretariat, Canadian Section follows the TBS Special Travel Authorities.

**Travel Directive, Rates and Allowances:**

The NAFTA Secretariat, Canadian Section follows the TBS Travel Directive, Rates and Allowances.

**ANNEX A**

**The Mandate of the NAFTA Secretariat**

The mandate of the Secretariat is set out in Article 2002.3 of the NAFTA and reads:

> *The Secretariat shall:*
>
> *a) provide assistance to the Commission;*
>
> *b) provide administrative assistance to:*
>
> *(i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908; and*
>
> *(ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and*
>
> *c) as the Commission may direct:*
>
> *(i) support the work of other committees and groups established under this Agreement; and*
>
> *(ii) otherwise facilitate the operation of this Agreement.*

In 1997 and then again in 2002, the Canadian Section's mandate was expanded to include the administration of the dispute settlement processes under the following trade agreements:

- the Canada-Israel Free Trade Agreement (CIFTA);
- the Canada-Chile Free Trade Agreement (CCFTA); and
- the Canada-Costa Rica Free Trade Agreement (CCRFTA).

**Legislation governing the work of the Canadian Section is as follow:**

- *the North American Free Trade Agreement Implementation Act;*
- *the Special Imports Measures Act;*
- *the Canada-Israel Free Trade Agreement Implementation Act;*
- *the Canada-Chile Free Trade Agreement Implementation Act;* and
- *the Canada-Costa Rica Free Trade Agreement Implementation Act.*

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